

**NEVADA DEPARTMENT OF
CONSERVATION & NATURAL RESOURCES**

STATE ENVIRONMENTAL COMMISSION

HEARING ARCHIVES FOR

REGULATORY PETITIONS

COMMISSION PETITION NO. 93003

LEGISLATIVE COUNSEL BUREAU (LCB) FILE NO. R-046-93

DOCUMENTS INCLUDED IN THIS FILE:

YES SECRETARY OF STATE FILING FORM

YES DISCLOSURE STATEMENT PURSUANT TO NRS 233B

REGULATORY PETITIONS

ORIGINAL DRAFTED BY COMMISSION

ADOPTED BY COMMISSION

YES AS FILED AND CODIFIED BY LCB

Secretary of State
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Governor's Signature

**Environmental
Commission**

Classification [] Proposed [] Adopted By Agency [XX] Temporary [] Emergency []

Brief description of action: SEC Petition 93003 (LCB R-046-93) permanently amends NAC 444.8632, 444.86325, 444.8633, and 444.8634 to correct possible conflicts, inconsistencies and exempts from adoption those federal regulations which are not delegated to the state for management of hazardous waste.

Authority citation other than 233B: NRS 459.500

Notice date:

Temporary - November 9, November 11, November 24, November 29 and December 4, 1992

Permanent - August 24, September 8 and September 16, 1993

Hearing date:

Temporary - December 10, 1992

Permanent - September 22, 1993

Date of Adoption of Agency:

Temporary - December 10, 1992

Permanent - September 22, 1993

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
PETITION 93003
LCB R-046-93**

The following statement is submitted for adopted permanent amendments to Nevada Administrative Code Section 445.8632, 444.86325, 444.8633 and 444.8634.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Petition 93003 was noticed six (6) times: 11-11-92, 11-24-92, 12-4-92, 8-24-93, 9-8-93 and 9-16-92 in the Las Vegas Review-Journal and Reno Gazette-Journal and three (3) times: 11-9-92, 11-29-92 and 12-4-92 in the Mohave Valley News.

2. A description of how comment was solicited from affected businesses, a summary of their response, and a explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1. No written comment was received prior to the hearing.

3. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

This was previously a temporary regulation adopted on December 10, 1993.

The permanent regulations were adopted at the SEC hearing on September 22, 1993 with no further public comment received.

4. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects: and
- (b) Both immediate and long-term effects.

- a. There are no adverse or beneficial economic effects on the public or regulated sources.
- b. There are no immediate or long-term economic effects on regulated sources. There are no immediate or long-term economic effects on the public.

5. The estimated cost to the agency for enforcement of the proposed regulation.

There is no additional cost to the agency for enforcement of the proposed regulation.

6. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary.

There are no other state or government agency regulations which the proposed amendments duplicate.

**CODIFIED PERMANENT REGULATION OF THE
NEVADA STATE ENVIRONMENTAL COMMISSION
LCB File No. R-046-93**

EXPLANATION--Matter in italics is new; matter in brackets [] is material to be omitted.

AUTHORITY: NRS 459.485 and 459.490

Section 1. NAC 444.8632 is hereby amended to read as follows:

444.8632 1. In addition to the requirements of NAC 444.850 to 444.8746, inclusive, any person who generates, transports, treats, stores, disposes or otherwise manages hazardous waste shall comply with all applicable requirements of [:

(a) 40 C.F.R. §§ 264.573 and 265.443, as those sections existed on February 18, 1992; and

(b) All other sections contained in] 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, and Parts 260 to 270, inclusive, as those [sections] *provisions* existed on July 1, [1991,] 1992, which, except as modified by NAC 444.86325, 444.8633 and 444.8634, are hereby adopted by reference. The state environmental commission may use federal statutes and regulations that are cited in 40 C.F.R. Part 2, Subpart A, Part 124, Subparts A and B, and Parts 260 to 270, inclusive, to interpret these sections and parts.

2. The volumes containing these parts may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, for the following prices:

(a) Volume 40 C.F.R. Part 2\$25
(b) Volume 40 C.F.R. Part 12427
(c) Volume 40 C.F.R.29

Sec. 2. NAC 444.86325 is hereby amended to read as follows:

444.86325 1. The following sections and parts of Title 40 of the Code of Federal Regulations are not adopted by reference:

(a) Sections 2.106(b) [, **2.110, 2.202(b), 2.205(i), 2.209(b)-(c), 2.212, 2.213, and 2.301 to 2.311 inclusive;**] *and* 2.110;

(b) Sections 124.1(b)-(e), 124.4, 124.5(e), 124.9, 124.10(a)(1)(iv), 124.12(e), 124.14(d), 124.15(b)(2), 124.16, 124.17(b), 124.18, 124.19 and 124.21;

(c) Sections 260.1(b)(4)-(6) and 260.20, 260.21 and 260.22;

(d) Sections 264.1(d), 264.1(f), 264.149, 164.150, [**264.301(k),**] **264.301(l)**, 265.1(c)(4), 265.149, 265.150 and 265.430;

(e) Section 266.111;

(f) Sections 268.5 and 268.6, Part 268, Subpart B, and sections 268.42(b) and 268.44;
and

(g) Sections 270.1(c)(1)(i), 270.60(b) and 270.64.

2. The following parts and sections of Title 40 of the Code of Federal Regulations are adopted by reference, as revised in this subsection:

(a) Part 124 is adopted with the following exceptions:

(1) Delete all references to appeals to the Administrator in section 124.5(b);

(2) Delete all references to "EPA-issued permits" and insert in its place "permits issued by the department," except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi);

(3) Delete all references to "when EPA is the permitting issuing authority" and insert in its place "when the department is authorized to issue a permit," except in sections 124.5(d), 124.10(b) and 124.10(d)(1)(vi); and

(4) Subpart A is adopted solely for the purpose of establishing procedures for permits for the management of hazardous waste, except that all references to "UIC," "PSD" and "NPDES" are deleted.

(b) Section 260.2(a) is adopted except that "the Freedom of Information Act, 5

U.S.C. section 552, section 3007(b) of RCRA and EPA regulations implementing the Freedom of Information Act and section 3007(b)" must be replaced with "NRS 459.555 and any regulations adopted pursuant thereto."

(c) Section 260.33(a) is adopted except that "in the region where the recycler is located" is deleted.

(d) Section 260.33(b) is adopted except that "and this decision may not be appealed to the Administrator:" is deleted.

(e) Section 260.41(a) is adopted except that "or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal" is deleted.

(f) Section 261.4(e)(3) is adopted except that "in the Region where the sample is collected" is deleted.

(g) Section 262.11(c)(1) is adopted except that ", or according to an equivalent method approved by the Administrator under 40 C.F.R. Part 260.21" is deleted.

(h) Sections 262.42(a)(2) and 262.42(b) are adopted except that "for the Region in which the generator is located" is deleted.

(i) Sections 264.18(c) and 265.18 are adopted except that "except for the Department of Energy Waste Isolation Pilot Project in New Mexico" is deleted.

(j) Sections 264.143(h), 264.145(h), 265.143(g) and 265.145(g) are adopted except that "If the facilities covered by the mechanisms are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" is deleted.

(k) Sections 264.147(a)(1)(i) , **[and]** 264.147(b)(1)(i) **and 265.147(a)(1)(i)** are adopted except that "or Regional Administrators if the facilities are located in more than one Region" is deleted.

(l) Section 264.151 is adopted with the following exceptions:

(1) Delete all references to "(of/for) the Regions in which the facilities are located;" and

(2) Delete "an agency of the United States Government" from the second paragraph of the trust agreement.

(m) Part 270 is adopted except that all references to "interim authorization" are deleted.

Sec.3. NAC 444.8633 is hereby amended to read as follows:

444.8633 Except as otherwise provided in NAC 444.8634:

1. Any references in any part of Title 40 of the Code of Federal Regulations to the "U.S. Environmental Protection Agency," "United State Environmental Protection Agency," "Agency," EPA Headquarters," "EPA Region(s) or "EPA" which have been adopted by reference shall be deemed to mean the "department" with the following exceptions:

(a) Any reference to "EPA" identification numbers;

(b) Any reference to "EPA" hazardous waste numbers;

(c) Any reference to "EPA" test methods;

(d) Any reference to "EPA" forms;

(e) Any reference to "EPA" publications or manuals;

(f) Any reference to "EPA" guidance;

(g) Any reference to "EPA" Acknowledgement of Consent; and

(h) Any reference to "EPA" or "Agency" in:

(1) Sections 124.1(f), 124.2(b), 124.6(e) and 124.10(c)(1)(ii);

(2) The provisions of section 124.2(a) defining "Administrator," "Director,"

"EPA", "permit," "person" and "Regional Administrator";

(3) The provisions of section 260.10 defining "Administrator," "EPA Region," "federal agency," "person" and "Regional Administrator";

(4) Part 260, Appendix I;

(5) **[Section 261.4(b)(7) and]** Part 261, Appendix IX;

(6) Section 262.32(b), Part 262, Subpart E, and the Appendix to Part 262;

(7) The Note following section 263.10(a);

(8) Sections 264.11 and 265.11;

(9) Section 268.1(e)(3);

(10) Sections 270.1(a)(1), 270.1(b), 270.3, 270.5, 270.10(e)(1)-(2), 270.11(a)(3), 270.32(a), 270.32(c), 270.51, 270.72(a)(5) and 270.72(b)(5); and

(11) The provisions of section 270.2 defining "Administrator," "approved program or approved State," "Director," "Environmental Protection Agency," "EPA," "final authorization," "permit," "person," "Regional Administrator" and "state/EPA agreement."

2. Any references in any part of Title 40 of the Code of Federal Regulations to the "Regional Administrator" or "Administrator" which have been adopted by reference shall be deemed to mean the "director" with the following exceptions:

(a) The provisions of section 124.2(a) defining "Administrator," "Director," "interstate agency," "major facility" and "Regional Administrator";

(b) Sections 124.2(b), 124.5(d), 124.6(e) and 124.10(b);

(c) The provisions of section 260.10 defining "Administrator," "Regional Administrator" and "hazardous waste constituent";

(d) Section 261.30(b) and Part 261, Appendix IX;

(e) Section 262.12, Part 262, Subpart E, and the Appendix to Part 262;

(f) Section 263.11;

(g) Sections 264.12(a) and 265.12(a);

(h) The provisions of section 270.2 defining "Administrator," "Director," "major facility," "Regional Administrator" and "state/EPA agreement"; and

(i) Sections 270.3, 270.5, 270.10(e)(1)-(2), 270.10(e)(4), 270.10(f)-(g), 270.11(a)(3), 270.14(b)(20), 270.32(b)(2) and 270.51.

3. Any references in any part of Title 40 of the Code of Federal Regulations to the "Resource Conservation and Recovery Act," "RCRA," "Subtitle C of RCRA," "RCRA Subtitle C" or "Subtitle C" which have been adopted by reference shall be deemed to mean "NRS 459.400 to 459.600, inclusive," when referring to an operating permit or to the federal hazardous waste program, with the following exceptions:

(a) Any references to a specific provision of the "Resource Conservation and Recovery Act," "RCRA," "Subtitle C of RCRA," "RCRA Subtitle C" or "Subtitle C";

(b) The provisions of section 124.2 defining "appropriate act and regulations" and "RCRA";

(c) The provisions of section 260.10 defining "Act of RCRA";

(d) Part 260, Appendix I;

(e) Part 261, Appendix IX;

(f) The Appendix to Part 262;

(g) Section 270.1(a)(2); and

(h) The provisions of section 270.1 defining "RCRA" and the provision of section 270.51 defining "RCRA permit."

4. Following any references in any part of Title 40 of the Code of Federal Regulations to a specific provision of the "Resource Conservation and Recovery Act," "RCRA," "Subtitle C of RCRA," "RCRA Subtitle C" or "Subtitle C," which have been adopted by reference, the phrase "or any comparable provisions of NRS 459.400 to 459.600, inclusive, and any regulations adopted pursuant thereto" shall be deemed to be added with the following exceptions:

- (a) Section 270.1(a)(2);
- (b) Section 270.72(a)(5); and
- (c) Section 270.72(b)(5).

5. Any references in any part of Title 40 of the Code of Federal Regulations to the "Department of Transportation" or "DOT" which have been adopted by reference shall be deemed to mean "the Department of Transportation of the United States."

6. Any references in any part of Title 40 of the Code of Federal Regulations to "state(s)," "authorized state," "approved state" or "approved program" which have been adopted by reference shall be deemed to mean "Nevada" with the following exceptions:

- (a) The provisions of section 124.2(a) defining "Director," "interstate agency," "person" and "state";
- (b) The provisions of section 260.10 defining "person," "state" and "United States";
- (c) Part 262;
- (d) Sections 264.143(e)(1), 264.145(e)(1), 264.147(a)(1)(ii), 264.147(b)(1)(ii), 264.147(g)(2) and 264.147(i)(4);
- (e) Sections 265.143(d)(1), 265.145(d)(1), **265.147(a)(1)(ii)**, 265.147(g)(2) and 265.147(i)(4); and
- (f) The provisions of section 270.2 defining "approved program or approved State," "Director," "final authorization," "person" and "state."

Sec.4. NAC 444.8634 is hereby amended to read as follows:

444.8634 1. Any reference to the following terms in 40 C.F.R. part 2, Subpart A, shall be deemed to have the meanings ascribed thereto in this section:

- (a) "District court of the United States" or "Federal district court" shall be deemed to mean "district court in Nevada";
- (b) "Federal agency" shall be deemed to mean "state agency";
- (c) Except in section 2.118(a), "Freedom of Information Act," "FOIA," the "Act" or

"5 U.S.C. 552" shall be deemed to mean "NRS 459.555 and any regulations adopted pursuant thereto";

(d) "Freedom of information officer" shall be deemed to mean the "Administrator of the division[";] *or his designee*";

(e) "General counsel" shall be deemed to mean the "attorney general of Nevada";

(f) Any addresses shall be deemed to mean the "Division of Environmental Protection, [123] 333 W. Nye Lane, Capitol Complex, Carson City, Nevada 89710";

(g) Any references to the employment rankings of "GS-8" or "GS-9" shall be deemed to mean, respectively, "grade 31" and "grade 32" of the Nevada personnel system established pursuant to NRS 284.170, and any reference to a fee for the cost of staff time shall be deemed to mean, respectively, \$15 and \$22.50 per half hour;

(h) Any references to duplication or reproduction charges of "0.15 per page" shall be deemed to mean "10 cents per page"; and

(i) Any reference to an officer except the general counsel shall be deemed to mean the "administrator of the division."

2. Fees required to be paid to the "U.S. Environmental Protection Agency" or the "United States Environmental Protection Agency" pursuant to section 2.120 of 40 C.F.R. Part 2 must be paid to the "State of Nevada" and deposited in the fund for the management of hazardous waste.

END OF PETITION 93003 (LCB R-046-93)